

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST PENDLETON WATER DISTRICT	)	
AND	)	
PENDLETON COUNTY WATER DISTRICT	)	
	)	CASE NO. 94-271
<hr style="width:50%; margin-left:0"/>	)	
ALLEGED VIOLATION OF KRS 278.020(1)	)	

O R D E R

On March 15, 1994, the Pendleton County Fiscal Court, East Pendleton Water District, and the Pendleton County Water District applied for permission to deviate from their statutory obligation to obtain a Certificate of Public Convenience and Necessity prior to construction of certain water lines and storage tanks in Pendleton County.<sup>1</sup> The Commission being incapable of granting permission to deviate from statutory requirements, the application was dismissed on March 31, 1994. It appearing to the Commission that construction of the facilities was virtually complete at the time of filing, the Commission refused to issue the certificate and dismissed the case on June 28, 1994.<sup>2</sup> It further appearing from the record that the utilities had violated KRS 278.020 by undertaking construction prior to obtaining a certificate, the

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<sup>1</sup> Case No. 94-106, A Joint Application of Pendleton County Fiscal Court, East Pendleton Water District and Pendleton County Water District for a Waiver of KRS 278.020(1).

<sup>2</sup> Case No. 94-172, A Joint Application of Pendleton County Fiscal Court, East Pendleton Water District and Pendleton County Water District for a Certificate of Convenience and Necessity.

Commission issued an Order opening this case and requiring the utilities to show cause why they should not be penalized for the violation.

An informal conference was held in this matter on September 30, 1994. The utilities were represented by counsel and argued that they had not violated the statute because they had not performed any construction. Rather, according to them, all construction and financing was undertaken by Pendleton County Fiscal Court. At the end of the informal conference, they agreed to provide various documents for Commission review.

The Commission has before it the advertisement for bids for the project which indicates that bids were to be received and reviewed by the fiscal court. The agreement for engineering services was executed by PDR Engineers, Inc. and the fiscal court. The construction contracts are also executed by the County Judge/Executive on behalf of the county. Various excerpts from the minutes of Pendleton Fiscal Court also support the position of the utilities that the project was undertaken and controlled by the court and not the utilities. Finally, the financing documents filed in Case No. 94-106 indicate that the fiscal court is responsible for financing the projects and retiring the debt.

The jurisdiction of the Commission extends to utilities in the Commonwealth. KRS 278.040(2). As such, the water districts are subject to Commission jurisdiction. Unless otherwise acting as a utility, Pendleton Fiscal Court is not as such subject to the jurisdiction of the Commission. However, KRS 278.020(1) requires

any "person, partnership, public or private corporation, or combination thereof" to obtain a Certificate of Public Convenience and Necessity prior to construction of facilities for furnishing "any of the services enumerated in KRS 278.010." Subsection (9) of that section limits the term "facility" to instrumentalities used "for, by or in connection with the business of any utility." Subsection (11) places the same limitation on the definition of "service." Subsection (3) of that section defines various forms of utilities. Each definition, including subsection (3)(d) relating to water utilities, limits the application of the definition to persons who are providing a service "to or for the public, for compensation."

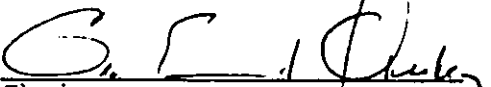
The record demonstrates that Pendleton Fiscal Court arranged for the construction and financing of water lines and a storage tank that are now providing service to the public. These facilities are being operated and maintained by the Pendleton County Water District and the East Pendleton Water District pursuant to verbal agreements with Pendleton County. Pendleton County will receive no compensation from either water district or any water customer for the use of these facilities. Rather, it will allow the new facilities to be used by the water districts at no charge. The water districts, not Pendleton County, will receive compensation from water customers for the service provided. Pendleton County will rely exclusively on its general fund revenues to meet its debt service obligations on the construction financing.

As it will receive no compensation, Pendleton County is not furnishing a service enumerated in KRS 278.010 and is therefore not a utility under the jurisdiction of the Commission. This conclusion is consistent with the holding of the former Court of Appeals in Austin v. City of Louisa, Ky., 264 S.W.2d 662 (1954). See also, State ex rel. North Carolina Utilities Commission v. New Hope Road Water Company, 248 N.C. 27, 102 S.E.2d 377 (1958). As the facility which Pendleton County constructed will not be used to provide a service enumerated in KRS 278.010 because Pendleton County will receive no compensation, Pendleton County is not required to obtain the certificate required by KRS 278.020(1). Hence, there is no legal basis to initiate any proceeding against Pendleton County. As it, rather than the utilities, constructed the facilities in question, this case should be dismissed as to Pendleton County Water District and East Pendleton Water District.

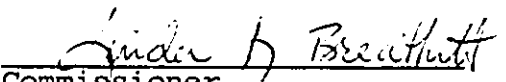
IT IS THEREFORE ORDERED that this case is dismissed.

Done at Frankfort, Kentucky, this 16th day of June, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director